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## RULES

### **18 NCAC 06A .2001      PURPOSE**

The purpose of the rules in this Section is to promote the overall economic health of North Carolina by:

- (1) facilitating responsible and competitive intrastate capital formation by North Carolina companies through increased availability of financial resources to businesses that might not otherwise have access to capital;
- (2) facilitating opportunities for residents of North Carolina to invest in local businesses;
- (3) facilitating small intrastate capital securities offerings that use the Internet; and
- (4) protecting the investing public.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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### **18 NCAC 06A .2002 SCOPE**

- (a) The Secretary of State establishes and enforces the rules in this Section pursuant to the authority delegated by:
- (1) the North Carolina PACES Act, S.L. 2016-103, the Invest NC Exemption under Chapter 78A of the North Carolina General Statutes; and
  - (2) G.S. 78A-45(a).
- (b) The rules in this Section shall not be construed to relieve any person from the provisions of G.S. 78A-8.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
Eff. April 1, 2017.

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### **18 NCAC 06A .2003 DEFINITIONS**

Except as otherwise provided, the following definitions apply to G.S. 78A-17.1 and this Section:

- (1) The definitions in:
  - (a) G.S. 78A-2;
  - (b) Rule .1104 of this Subchapter; and
  - (c) 18 NCAC 06B .0102.
- (2) “Bank” means:
  - (a) a banking institution organized under the laws of the United States;
  - (b) a member bank of the Federal Reserve System;
  - (c) any other banking institution, whether incorporated or not:
    - (i) doing business under laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. 92a);
    - (ii) which is supervised and examined by a state or federal agency having supervision over banks; and
    - (iii) which is not operated for the purpose of evading the North Carolina Securities Act.
- (3) “Blank check company” means a development stage company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.
- (4) “Blind pool” means a company that sells securities without specifying how invested money will be spent.
- (5) “Commodity pool” means an investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity futures, option contracts, or other securities.
- (6) “Dealer”, “Registered dealer” or “registered dealer or salesman” means a dealer or salesman registered in North Carolina pursuant to G.S. 78A-36.
- (7) “Depository institution” means a bank, savings institution, trust company or credit union that is:
  - (a) organized or chartered under the laws of a State or of the United States;
  - (b) authorized to receive deposits; and
  - (c) supervised and examined by an official or agency of a State or the United States if its deposits or share accounts are insured by the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Share Insurance Fund (NCUSIF) or a successor authorized by federal law.

- (8) “Document” or “documents” means originals, copies, and attachments to, correspondence, memoranda, notes, drafts, records, agreements, meeting agendas, reports, legal or financial instruments, e-mail, instant messages, records of social media postings, and any mode of representing words, letters, and numbers. It includes all forms and formats, including writing, print, typing, drawing, audio, and other recording, electronically, magnetically or mechanically stored, tape-recording, computerized, photographed, digital, or stored as voice mail, website, archived information, and backups of information.
- (9) “Escrow account” means an account that holds investor funds pursuant to an escrow agreement.
- (10) “Escrow agent” means a person that administers an escrow account by means of an escrow agreement in connection with the Exemption. The following persons may act as an escrow agent:
- (a) a bank or depository institution;
  - (b) a registered dealer; or
  - (c) a lawyer.
- (11) The “Exemption” means the exemption allowed by G.S. 78A-17(20) in connection with an offering of a security made by an issuer in reliance on a federal intrastate offering exemption in compliance with the Securities Act of 1933.
- (12) “Holding company” means an entity whose principal purpose is owning stock in, or supervising the management of, other companies.
- (13) “Internet Web site” means a North Carolina Intrastate Funding Portal except as used in G.S. 78A-17.1(c).
- (14) “Lawyer” means a licensed lawyer who is an active member of the North Carolina State Bar in good standing and who has at least one law office physically located in North Carolina.
- (15) “Legal identity” means:
- (a) the legal name of an entity on file with the business registry in its state of formation;
  - (b) a name assumed by a foreign entity pursuant to G.S. 55-15-03(a)(1), G.S. 55A-15-03(a)(1), or G.S. 57D-7-03(a)(1); and
  - (c) any assumed names filed by the entity in North Carolina pursuant to G.S. 66-71.4.
- (16) “Minimum offering amount” means an amount of funds equal to or below the target offering amount that is set by the issuer and that shall not be less than 20 percent of the target offering amount.
- (17) “North Carolina Intrastate Funding Portal” or “funding portal” means any person that:
- (a) is not a registered dealer or salesman pursuant to G.S. 78A-36; and
  - (b) is in the business of acting as an intermediary in transactions involving the offer or sale of securities for or on behalf of an issuer pursuant to the Exemption.
- (18) “Platform” means a program or application accessible via the Internet or other similar electronic communication medium where information is provided and where prospective investors, investors, and issuers publicly communicate with each other online.
- (19) “Registered with the Secretary of State” means:
- (a) a domestic entity that is formed under North Carolina law and is in “current/active status” with the Department; or
  - (b) a foreign entity that:
    - (i) has obtained a Certificate of Authority to transact business in North Carolina from the Department; and
    - (ii) is “current/active” with the Department and in good standing in its state of formation.
- (20) “Target date” means the date set by the issuer by which it expects to reach the minimum offering amount. The target date shall not exceed 12 months from the date of the Administrator’s notice of compliance required by Rule .2015 of this Section.
- (21) “Target offering amount” is the total amount of funds that the issuer intends to raise by offering the securities to investors. The target offering amount for a single offering shall not exceed two million dollars (\$2,000,000).

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4(a); Eff. April 1, 2017.*

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#### **18 NCAC 06A .2004 EXEMPTION LIMITATIONS**

(a) An issuer shall set a target offering amount, a target date, and a minimum offering amount for the securities offering.

(b) An issuer conducting a securities offering shall:

- (1) set a target offering amount of no more than two million dollars (\$2,000,000) in any 12 consecutive months if its disclosure document includes audited or reviewed financial statements for its most recently completed full fiscal year or the immediately preceding 12 months;
- (2) set a target offering amount of no more than one million dollars (\$1,000,000) in any 12 consecutive months if its disclosure document does not include audited or reviewed financial statements;
- (3) set a minimum offering amount that shall be no less than 20 percent of the target offering amount set by the issuer and disclosed in the disclosure document; and
- (4) set a target date for the securities offering that shall be no later than 12 months from the date of the Administrator's notice of compliance pursuant to Rule .2015(1) of this Section.

(c) An issuer shall not accept more than five thousand dollars (\$5,000) in any 12-month period from any single investor who is not accredited. An accredited investor is defined by 17 CFR 230.501, which is incorporated by reference. Copies of 17 CFR 230.501 are available at no cost by sending an email request to [secdiv@sosnc.gov](mailto:secdiv@sosnc.gov) or online at <http://www.sosnc.gov/sec/statutes.aspx>.

(d) The securities offering shall expire 12 months from the date of the Administrator's notice of compliance pursuant to Rule .2015(1) of this Section.

(e) The securities offering shall not be exempt under G.S. 78A-17.1 unless the issuer has received the Administrator's notice of compliance pursuant to Rule .2015(1) of this Section.

(f) The offering or sale of a security that may be qualified for the Exemption but has not received the Administrator's notice of compliance pursuant to Rule .2015(1) of this Section shall be presumed to violate the Securities Act.

(g) An issuer shall not offer a security relying on the Exemption until it receives the Administrator's notice of compliance pursuant to Rule .2015(1) of this Section.

(h) An issuer shall not be eligible to rely on the Exemption if it is a holding company, blind pool, commodity pool, a blank check company, peer-to-peer, or similar online marketplace lender, real estate investment trust (REIT), a company issuing viatical settlement contracts, or a company issuing asset-backed securities as defined in 17 CFR 229.1101(c), which is incorporated by reference including subsequent amendments and editions. Copies of 17 CFR 229.1101(c) are available at no cost by sending an email request to [secdiv@sosnc.gov](mailto:secdiv@sosnc.gov) or online at <http://www.sosnc.gov/sec/statutes.aspx>.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2005 COUNTING SALES**

Sales by the issuer to its controlling persons, its funding portal, or its registered dealer shall not be included in the calculations of the minimum offering amount or the target offering amount. For purposes of this Rule and Rule .2061, "controlling persons" shall have the meaning set out in G.S. 78A-17.1(d).

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2006 RESERVED FOR FUTURE CODIFICATION**

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### **18 NCAC 06A .2007 ISSUER FILING REQUIREMENTS**

(a) An issuer shall file the following with the Administrator at least 10 business days before it intends to offer securities pursuant to the Exemption:

- (1) a Notice of Intrastate Claim of Exemption Form (“Form NCE”) that complies with Rules .2008 and .2009 of this Section;
- (2) a disclosure document pursuant to the requirements of Rules .2010 through .2012 of this Section;
- (3) the escrow agreement that the issuer proposes to use in connection with the Exemption consistent with the rules in this Section, and any contracts with the escrow agent relating to its administration of the escrow account; and
- (4) the nonrefundable fee required by G.S. 78A-17.1(g).

(b) If any information on the Form NCE becomes inaccurate or misleading, an issuer shall amend its Form NCE by filing with the Administrator within 10 business days an amended Form NCE.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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### **18 NCAC 06A .2008 NOTICE OF INTRASTATE CLAIM OF EXEMPTION FORM REQUIREMENTS**

An issuer shall file with the Administrator an original, legible Form NCE and required attachments. The Form NCE shall include the following:

- (1) the issuer’s attestation:
  - (a) to the issuer’s name or legal identity, and contact information;
  - (b) to the issuer’s registration with the Secretary of State;
  - (c) as to the specific federal intrastate offering exemption relied upon;
  - (d) as to the minimum offering amount, the target offering amount, and target date in accordance with Rule .2004 of this Section;
  - (e) as to the issuer’s commitment that it shall not accept more than five thousand dollars (\$5,000) from any single investor in any 12-month period, unless the issuer reasonably believes that the purchaser is an accredited investor;
  - (f) that the issuer does not fit within the exclusions in G.S. 78A-17.1(a)(6);
  - (g) that the issuer is not a company listed or described in Rule .2004(h) of this Section;
  - (h) as to the absence of disqualification pursuant to G.S. 78A-17.1(e) for the issuer or any person affiliated with the issuer or the securities offering;
  - (i) that the issuer shall comply with Rules .2013 and .2063 of this Section regarding misrepresentations and omissions of material facts in its disclosures to prospective investors and investors; and
  - (j) that the issuer consents to personal jurisdiction of the Administrator over the issuer and consents to service of process as authorized by G.S. 78A-63;
- (2) a copy of any agreement entered into between the issuer and its funding portal or registered dealer or salesman;
- (3) the names and titles of persons engaged in the offer or sale of the issuer’s securities; and
- (4) the names and titles of persons who will serve as the investor contact person(s) for the issuer.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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### **18 NCAC 06A .2009 SIGNING FORM NCE**

The issuer shall sign the Form NCE. The Form NCE shall be legibly signed:

- (1) by a person authorized to sign pursuant to G.S. 55-1-20 for a domestic or foreign corporation;
- (2) by a person authorized to sign pursuant to G.S. 55A-1-20 for a domestic or foreign nonprofit corporation;
- (3) by all the issuer's managers for a limited liability company; or
- (4) by all persons managing the affairs of, or performing similar functions for, an issuer that is not a corporation or a limited liability company.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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### **18 NCAC 06A .2010      CONTENT OF DISCLOSURE DOCUMENT**

An issuer shall prepare and sign a disclosure document with all facts material to a reasonable investor's decision as to whether to invest in the issuer's securities offering. In addition, the disclosure document shall include:

- (1) information required by G.S. 78A-17.1(a)(5)b. and G.S. 78A-17.1(a)(13);
- (2) the name, the street address of the issuer's business, and the mailing address, if different, of the issuer's business;
- (3) the type of the issuer's business entity, as recognized under North Carolina law. Note: Examples of types of business entities are limited partnerships, corporations, and limited liability companies (LLCs);
- (4) a description of the issuer's business;
- (5) a description of the history of the issuer's business that includes its three most recent years;
- (6) a description of the financial condition of the issuer:
  - (a) for an issuer with an operating history, the description shall include: liquidity, capital resources, historical results of operations, and whether historical results and cash flows are representative of what investors should expect in the future; or
  - (b) for an issuer with no operating history, the description shall include planned financial milestones, and operational, liquidity, and other challenges;
- (7) a description of how the issuer plans to use the funds raised by the securities offering:
  - (a) if the minimum offering amount is reached;
  - (b) if the target offering amount is reached; and
  - (c) to pay fees to the escrow agent, registered dealer, or funding portal, including how and when the fees will be paid;
- (8) any information necessary to make the material facts disclosed not misleading;
- (9) the statements required by Rule .2011 of this Section and, by 17 CFR 230.147(f)(3), or 230.147A(f)(3) which are incorporated by reference including subsequent amendments and editions;
- (10) a statement that investors shall direct all payments to the escrow agent to be deposited into the escrow account until at least the minimum offering amount has been reached;
- (11) a statement that an investor may cancel an investment for any reason before the minimum offering amount has been reached;
- (12) a description of the cancellation procedure that the investors shall follow in order to cancel the investment;
- (13) a description of how and when the funds raised by the securities offering will:
  - (a) be returned to an investor if the investor cancels the investment before the minimum offering amount is reached;
  - (b) be returned to the investors if the minimum offering amount is not reached by the target date; and
  - (c) be released to the issuer if the minimum offering amount is reached by the target date or if the issuer chooses to leave the funds in the escrow account for any period of time after the minimum offering amount is reached;
- (14) a copy of the signed escrow agreement; and
- (15) its financial statements, if the issuer has undergone an audit or review in the previous 12 months.

Copies of 17 CFR 230.147(f)(3) and 230.147A(f)(3) are available at no cost by sending an email request to [secdiv@sosnc.gov](mailto:secdiv@sosnc.gov) or online at <http://www.sosnc.gov/sec/statutes.aspx>.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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#### **18 NCAC 06A .2011 REQUIRED STATEMENTS TO INCLUDE IN ISSUER DISCLOSURE DOCUMENT**

(a) An issuer shall include the legend required by G.S. 78A-17.1(a)(7) in its disclosure document as specified by this Rule.

(b) The text of the legend shall be separated into these paragraphs:

- (1) “In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities have not been recommended by any federal or state securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this document. Any representation to the contrary is a criminal offense.”
- (2) “These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act of 1933, as amended, and the applicable state securities laws, pursuant to registration or exemption therefrom. Investors should be aware that they will be required to bear the financial risks of this investment for an indefinite period of time.”

The numbers on the paragraphs above do not have to be included when the text of the legend is presented.

(c) The issuer shall present the legend conspicuously and in a readable form. For purposes of this Rule, “conspicuously and in a readable form” means:

- (1) in a bold font that is at least 10 point in size; and
- (2) uses at least one additional method of the issuer’s choice to set the legend apart and emphasize it in comparison to other cover page information. NOTE: Examples of other ways of setting the legend apart include a different color font, white space around the legend, increased line spacing, or bordering the legend.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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#### **18 NCAC 06A .2012 CIRCUMSTANCES WHEN ADDITIONAL DISCLOSURE DOCUMENT CONTENT REQUIRED**

(a) If the issuer has chosen a target offering amount that exceeds one million dollars (\$1,000,000) and is no more than two million dollars (\$2,000,000), the issuer shall include in its disclosure document a copy of its financial statements for its most recently completed full fiscal year (or the immediately preceding 12 months).

(b) The financial statements shall:

- (1) have been audited or reviewed and prepared in accordance with generally accepted accounting principles (“GAAP”); and
- (2) include:
  - (A) balance sheets;
  - (B) comprehensive statement of consolidated income;
  - (C) statements of cash flows;
  - (D) statements of changes in stockholders’ equity; and
  - (E) notes to the financial statements.

(c) If the financial statements required by Paragraph (a) of this Rule are more than four months old, then the issuer shall also provide interim financial statements for the preceding four or more months. The interim financial statements are not subject to Paragraph (b)(1) of this Rule.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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#### **18 NCAC 06A .2013 ISSUER TO CEASE OFFERING AND AMEND THE DISCLOSURE DOCUMENT**

- (a) The issuer shall immediately cease the offer or sale of the securities and amend the disclosure document if:
- (1) there is any material change in the securities or securities offering;
  - (2) the disclosure document becomes incomplete in any material respect; or
  - (3) the disclosure document contains any statement that is, in the light of the circumstances under which it is made, false or misleading with respect to any material fact.
- (b) The issuer shall not resume the sale or offer for sale until the issuer has:
- (1) prepared and provided the amended disclosure document to the Administrator and the investors; and
  - (2) received the Administrator's notice of compliance pursuant to Rule .2015 of this Section; and
  - (3) provided all investors with:
    - (A) the opportunity to cancel their investments if the minimum offering amount has not been reached; or
    - (B) rescission offers that may be consistent with G.S. 78A-56(g).

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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#### **18 NCAC 06A .2014 FACTORS CONSIDERED WHEN REVIEWING THE CLAIM OF EXEMPTION**

- (a) When determining whether the securities offering complies with the conditions of the Exemption, the Administrator may consider the following factors and any reported material changes:
- (1) whether all filings required by Rule .2007 of this Section have been made;
  - (2) the contents of the Form NCE;
  - (3) the contents of the disclosure document;
  - (4) the contents of the escrow agreement and whether the Administrator has approved it pursuant to Rules .2020 and .2021 of this Section;
  - (5) the contents of any contracts related to the execution of the securities offering transactions;
  - (6) the funding portal, if any, selected by the issuer;
  - (7) whether the proposed securities offering complies with other requirements of G.S.78A-17.1 and this Section;
  - (8) whether the securities offering would tend to work a fraud on the investing public;
  - (9) whether regulatory agencies oversee the activities of the entities that are parties to the transactions related to the securities offering;
  - (10) whether the issuer is a prohibited business pursuant to G.S. 78A-17.1 and the rules in this Chapter; and
  - (11) any other factors the Administrator deems relevant.
- (b) The Administrator may consider information not included in the Form NCE and other documents pursuant to Rule .2007 of this Section, and may ask the issuer for additional relevant information.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);*

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### **18 NCAC 06A .2015 ADMINISTRATOR'S NOTICE OF COMPLIANCE**

After review of the relevant information, the Administrator may issue a notice of compliance:

- (1) with the filing requirements of Rule .2007 of this Section; or
- (2) with Rule .2013(b)(1) of this Section with regard to any material changes.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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### **18 NCAC 06A .2016 DENIAL OR REVOCATION OF THE EXEMPTION**

The Administrator may by order, deny or revoke the Exemption pursuant to G.S. 78A-18(a) if:

- (1) the issuer fails to comply with the Exemption requirements after receiving a notice of deficiency;
- (2) the issuer fails to furnish requested information or evidence of compliance to the Administrator;
- (3) the issuer fails to keep or produce records pursuant to Rule .2060(d) of this Section;
- (4) the securities offering does not comply with the conditions set by G.S. 78A-17.1 and the rules of this Chapter;
- (5) the securities offering is part of a plan or scheme to avoid registration;
- (6) the structure of the securities offering is so complex as to be misleading to the investing public; or
- (7) the issuer has engaged or is about to engage in any act or practice that is a violation of the Securities Act or rules of this Chapter.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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### **18 NCAC 06A .2017 ESCROW ACCOUNT**

(a) An issuer shall be responsible for the establishment and maintenance of an escrow account for investor fund deposits.

(b) The escrow account shall:

- (1) be administered by an escrow agent;
- (2) be a segregated account for each securities offering; and
- (3) be FDIC or NCUSIF insured.

(c) If the escrow agent is a lawyer, the escrow account shall also:

- (1) be a fiduciary account maintained at a bank in North Carolina and operated according to the North Carolina Rules of Professional Conduct, 27 NCAC 02 Rule 1.15, which is incorporated by reference, including subsequent amendments and editions; and
- (2) be designated as an IOLTA account, as defined in 27 NCAC 01D .1316, which is incorporated by reference, including subsequent amendments and editions.

Copies of the rules incorporated by reference in Paragraph (c) are available at no cost by sending an email request to [secdiv@sosnc.gov](mailto:secdiv@sosnc.gov) or online at <http://reports.oah.state.nc.us/ncac.asp>.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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### **18 NCAC 06A .2018 ISSUER TO PROVIDE INFORMATION TO THE ESCROW AGENT**

An issuer shall provide accurate and timely information to the escrow agent in order to establish and maintain the escrow account and escrow agreement, including the minimum offering amount and the target date set by the issuer in accordance with G.S. 78A-17.1(a)(5)c.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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### **18 NCAC 06A .2019 TERMS OF ESCROW AGREEMENT**

The escrow agreement shall include:

- (1) the identity of the escrow agent including the name, address where notices may be directed, telephone number, website of the agent, and the name of the person responsible for responding to inquiries about the escrow account;
- (2) the identity of the bank or depository institution where the escrow account will be maintained, including its name, address, telephone number, website, and the name of the person responsible for responding to inquiries about the escrow account;
- (3) the account number of the escrow account;
- (4) a statement confirming that the escrow account is FDIC or NCUSIF insured;
- (5) a description of the services to be provided by the escrow agent;
- (6) the fees charged for the services provided by the escrow agent;
- (7) a requirement that the escrow agent shall authorize the release of the securities offering proceeds to the issuer only if:
  - (a) the aggregate funds deposited into the escrow account from all investors is equal to or greater than the minimum offering amount; and
  - (b) the minimum offering amount has been deposited into the escrow account by the target date stated in the disclosure document;
- (8) a requirement that the escrow agent authorize the return of funds to investors as required by G.S. 78A-17.1 and Rules .2054 and .2055 of this Section;
- (9) a description of how the issuer shall notify the escrow agent of the investor's cancellation of the investment in order to request that the invested funds be returned to the investor;
- (10) a requirement that the escrow agent shall administer the escrow account in compliance with G.S. 78A-17.1 and Rules .2023 through .2028 of this Section;
- (11) a description of how any interest accrued in the escrow account will be administered;
- (12) a description of how an escrow agent will address a dispute between the issuer and the investor;
- (13) a description disclosing how any lawyer acting as an escrow agent will handle a conflict of interest, if applicable;
- (14) a requirement that the escrow agent be responsible for prudent processing, safeguarding, and accounting for the funds and information entrusted to it by investors and the issuer; and
- (15) how the funds will be safeguarded if the escrow agent, funding portal, or any other party to the agreement ceases doing business in North Carolina.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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### **18 NCAC 06A .2020 REVIEW OF THE ESCROW AGREEMENT**

(a) The Administrator may consider the following factors when reviewing an issuer's escrow agreement to determine whether to approve it:

- (1) the contents of the escrow agreement;

- (2) the contents of any contracts with the escrow agent or escrow administering parties relating to the administration of the escrow account;
  - (3) the escrow agent's:
    - (A) physical location;
    - (B) experience as an escrow agent, in the administration of escrow accounts, or provision of escrow services;
    - (C) financial solvency;
    - (D) disciplinary history; and
    - (E) technology to be utilized;
  - (4) other parties to the escrow agreement and their:
    - (A) physical locations;
    - (B) financial stability;
    - (C) disciplinary history; and
    - (D) technology to be utilized;
  - (5) regulatory agencies, if any, that oversee the activities of the entities that are parties to the escrow agreement; and
  - (6) any other factors that the Administrator deems relevant.
- (b) When reviewing the agreement, the Administrator may consider information not included in the escrow agreement and may ask the escrow agent for additional relevant information.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2021 ADMINISTRATOR'S REJECTION OF ESCROW AGREEMENT**

The Administrator may reject the issuer's escrow agreement if the Administrator determines that:

- (1) the escrow agreement does not comply with the rules of this Section;
- (2) one or more of the factors listed in Rule .2020 of this Section make the escrow agreement unnecessarily risky for the issuer or the investor;
- (3) the escrow agent is unsuitable to manage the escrow account; or
- (4) the escrow agreement includes terms that could cause the issuer to lose its exemption.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2022 ADMINISTRATOR NOTICE OF APPROVAL OR REJECTION OF ESCROW AGREEMENT**

The Administrator shall not issue a notice of compliance pursuant to Rule .2015(1) of this Section unless the escrow agreement has been approved by the Administrator.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2023 ESCROW AGENT DUTIES, RESPONSIBILITIES, AND STANDARDS OF CONDUCT**

An escrow agent and all persons associated with it shall:

- (1) observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business;
- (2) give particular attention to any conflicts of interest that may arise or exist;
- (3) preserve and maintain all documents related to its status and service as an escrow agent for six years after the filing of the Form NCE and make such documents available to the Administrator upon request; and
- (4) provide notice to the Administrator of any material changes to the escrow agreement.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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**18 NCAC 06A .2024 NOTICE TO ADMINISTRATOR MINIMUM OFFERING AMOUNT REACHED, FUNDS RELEASED FROM THE ESCROW ACCOUNT, AND TERMINATION OF ESCROW AGREEMENT**

- (a) An escrow agent shall file a written notice to the Administrator within 10 days:
  - (1) after reaching the minimum offering amount; and
  - (2) after the termination of the escrow agreement.
- (b) An issuer shall file a written notice to the Administrator within 10 days:
  - (1) after reaching the minimum offering amount;
  - (2) after the initial release of funds from the escrow account; and
  - (3) after the termination of the escrow agreement.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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**18 NCAC 06A .2025 CONTENT OF NOTICE OF RELEASE OF FUNDS FROM ESCROW ACCOUNT**

The notice provided pursuant to Rule .2024 of this Section shall include the following:

- (1) the aggregate amount of securities sold during the offering, expressed as:
  - (a) numbers of units of securities sold; and
  - (b) dollars raised by the sale of securities;
- (2) the identity and residence of each investor;
- (3) the date on which the funds were released to the issuer or returned to investors; and
- (4) the date of the termination of the escrow agreement, if already terminated.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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**18 NCAC 06A .2026 REGISTERED DEALER ACTING AS AN ESCROW AGENT**

A registered dealer that acts as an escrow agent for the issuer's securities offering shall:

- (1) be registered with the SEC and the State of North Carolina to offer and sell the intrastate securities offering;
- (2) deposit and hold the investor funds in an escrow account pursuant to an escrow agreement;
- (3) comply with Rules .2024 and .2025 of this Section, 17 CFR 240.15c2-4, and 17 CFR 240.10b-9, which are incorporated by reference including subsequent amendments and editions.

Copies of the regulations incorporated by reference in item (3) of this Rule may be obtained at no cost by sending an email to [secdiv@sosnc.gov](mailto:secdiv@sosnc.gov), or online at: <http://www.sosnc.gov/sec/statutes.aspx>.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2027 ESCROW AGENT REQUIREMENTS**

Pursuant to the escrow agreement consistent with Rules .2017 through .2028 of this Section, an escrow agent for the issuer's securities offering, including a lawyer, shall:

- (1) collect at least the following information from the issuer or investors:
  - (a) name of the investors;
  - (b) residence of the investors;
  - (c) the aggregate amount of securities sold during the offering, expressed as:
    - (i) numbers of units of securities sold; and
    - (ii) dollars raised by the sale of securities; and
- (2) make such documents available to the Administrator upon request.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2028 TREATMENT OF INFORMATION**

Information that is received or transmitted directly or indirectly from a bank or depository institution to the Administrator pursuant to G.S. 78A-17.1(a)(10) shall be designated as confidential and trade secrets while in the possession of the Administrator.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2029 RESERVED FOR FUTURE CODIFICATION**

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#### **18 NCAC 06A .2030 FUNDING PORTAL REGISTRATION**

(a) A funding portal shall apply for registration as a North Carolina Intrastate Funding Portal by filing with the Administrator a Form North Carolina Intrastate Funding Portal (Form NCFP) at least 10 business days before it intends to post an offering on behalf of any issuer relying on the Exemption.

(b) A funding portal shall not post a securities offering before its registration has been declared effective by the Administrator.

(c) A funding portal's registration expires on December 31 of each year, unless renewed within 30 days of expiration by filing a newly executed Form NCFP.

(d) A funding portal that undergoes a merger, an acquisition, or any other ownership change shall file a Form NCFP on behalf of the surviving or new entity before the effective date of the change.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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### **18 NCAC 06A .2031 CONTENTS OF FORM NCFP**

The Form NCFP shall include:

- (1) all information that the funding portal is required to provide under G.S. 78A-17.1(a)(9)c, including:
  - (a) the funding portal's legal identity;
  - (b) the funding portal's physical location;
  - (c) the name and address of the funding portal's registered agent;
  - (d) the identity of the individual responsible for filing updates to the funding portal's Form NCFP;
  - (e) the identity of its officers, directors, or any persons occupying a similar status or performing a similar function; and
  - (f) the funding portal's website address (URL);
- (2) the funding portal's attestations required under Rule .2032 of this Section;
- (3) a description of how the funding portal will safeguard the investment funds in the escrow account if its registration expires or it no longer intends to do business in North Carolina;
- (4) the identity of the escrow agent that the funding portal intends to use to hold investor funds;
- (5) a sample escrow agreement that is compliant with Rule .2019 of this Section; and
- (6) all contracts between the funding portal and its service providers, banks, or depository institutions governing the administration of investor funds.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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### **18 NCAC 06A .2032 REQUIRED FUNDING PORTAL ATTESTATIONS**

A funding portal shall attest in the Form NCFP that it:

- (1) is registered with the Secretary of State and has North Carolina as its principal place of business;
- (2) is being used to offer and sell securities under G.S. 78A-17.1;
- (3) will not engage in the prohibited activities set out in G.S. 78A-17.1(a)(11);
- (4) is not subject to disqualification pursuant to G.S. 78A-17.1(e);
- (5) does not have any officers, directors, or any person occupying a similar status or performing a similar function that are subject to disqualification pursuant to G.S. 78A-17.1(e);
- (6) will not buy or sell personally identifiable information of any prospective investor or investor;
- (7) agrees to comply with Rules .2037, .2039, and .2061 of this Section;
- (8) agrees to comply with Rule .2038 of this Section regarding denying access to those it reasonably believes are subject to disqualification or potential for fraud or investor harm;
- (9) shall not handle or take custody of the funds of the issuer or investors;
- (10) shall safeguard prospective investor and investor personal identifying information and immediately notify the Administrator in writing of any compromise of confidentiality; and
- (11) consents to personal jurisdiction of the Administrator and consents to service of process by the Administrator.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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### **18 NCAC 06A .2033 REVIEW OF THE FUNDING PORTAL REGISTRATION**

(a) When determining whether a registration is effective, the Administrator may consider:

- (1) the contents of Form NCFP and any amendments;

- (2) the contents of any contracts provided with the Form NCFP;
  - (3) the escrow agent that the funding portal intends to use;
  - (4) the funding portal's:
    - (A) physical location;
    - (B) experience as a funding portal;
    - (C) financial solvency;
    - (D) disciplinary history; and
    - (E) technology to be utilized;
  - (5) other parties to the contracts with the funding portal that facilitate its ability to act as a funding portal and their:
    - (A) physical locations;
    - (B) financial stability;
    - (C) disciplinary history; and
    - (D) technology to be utilized;
  - (6) regulatory agencies, if any, that oversee the activities of the entities that are involved with the funding portal; and
  - (7) any other factors the Administrator deems relevant.
- (b) When reviewing an application for registration of the funding portal, the Administrator may consider information not included in the Form NCFP and may ask the funding portal for additional relevant information.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2034 ADMINISTRATOR DENIAL OR REVOCATION OF FUNDING PORTAL REGISTRATION**

The Administrator may deny or revoke registration of a funding portal if the Administrator determines that:

- (1) the funding portal has not complied with the rules in this Section;
- (2) the funding portal has not instituted procedures to ensure the necessary due diligence occurs;
- (3) the funding portal has not instituted procedures to protect investors;
- (4) the funding portal has prematurely posted an offering before receiving notice of effective registration from the Administrator;
- (5) the factors in Rule .2033 of this Section individually or considered as a whole make the funding portal unnecessarily risky for the issuer or the investor; or
- (6) one of the grounds for action in G.S.78A-39 applies to the funding portal.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2035 ADMINISTRATOR NOTICE OF EFFECTIVE FUNDING PORTAL REGISTRATION**

After the Administrator considers the Form NCFP and the factors in Rules .2033 and .2034, the Administrator shall either provide the funding portal with written notice of effectiveness or denial of the registration.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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### **18 NCAC 06A .2036 FUNDING PORTAL NOTICE TO ADMINISTRATOR OF CHANGES**

(a) Within 30 days of any changes to information on the Form NCFP, a funding portal shall file an amended Form NCFP with the Administrator. A funding portal shall comply with Rule .2030(d) if there is a change in its ownership.

(b) A funding portal shall provide notice to the Administrator within five business days of a change in the issuer(s) using the funding portal by one of the following:

- (1) providing the identity of additional issuers on its Form NCFP;
- (2) amending its Form NCFP to add or remove issuers; or
- (3) providing a separate written statement identifying each issuer using the funding portal.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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### **18 NCAC 06A .2037 FUNDING PORTAL FINANCIAL INTEREST IN ISSUER**

A funding portal shall not have a financial interest in an issuer that is offering or selling securities on its platform unless:

- (1) the funding portal receives the financial interest as compensation for the services provided to or for the benefit of the issuer;
- (2) the services are provided in connection with the issuer's offer or sale of securities in the intrastate offering;
- (3) the financial interest consists of securities of the same class and having the same terms, conditions, and rights as the securities being offered or sold in the intrastate offering through the funding portal's platform;
- (4) the issuer's disclosure document includes the funding portal's financial interest in the issuer; and
- (5) the financial interest shall not be included in either the calculations of the minimum offering amount or the target offering amount.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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### **18 NCAC 06A .2038 FUNDING PORTAL DENIAL OF ACCESS**

(a) A funding portal shall exercise due diligence in determining whether an issuer's securities offering presents the potential for fraud or other investor protection concerns.

(b) A funding portal shall deny access to its platform to an issuer or entity if it determines that there is a reasonable basis for believing that any of the following are subject to disqualification pursuant to G.S. 78A-17.1(e):

- (1) the issuer;
- (2) any of the issuer's officers, directors, or persons occupying a similar status or performing a similar function; or
- (3) holders of 10 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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### **18 NCAC 06A .2039 FUNDING PORTAL STANDARDS OF CONDUCT**

(a) A funding portal and all persons associated with it shall:

- (1) observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business; and
  - (2) give particular attention to any conflicts of interest that may arise or exist.
- (b) A funding portal and all persons associated with it who do not comply with the rules in this Section may be considered by the Administrator to be engaging in acts in violation of this Rule.
- (c) Violations of this Rule may be grounds for denial, censure, suspension, or revocation of a funding portal's registration or other action authorized by G.S. 78A-39.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2040 RESERVED FOR FUTURE CODIFICATION**

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#### **18 NCAC 06A .2041 LIMITATIONS ON GENERAL SOLICITATION AND ADVERTISING**

An issuer relying on the Exemption and persons acting on behalf of the issuer may not engage in general solicitation or advertising, except as permitted by Rules .2043 and .2044 of this Section.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2042 MEDIA COVERAGE OF A SECURITIES OFFERING USING THE EXEMPTION**

Media coverage of a securities offering that has been prepared, authorized, approved, paid for, or provided other consideration for, by or on behalf of the issuer shall be deemed general solicitation or advertising.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2043 MANDATORY CONTENT REQUIREMENT IN PERMITTED ADVERTISING NOTICE**

An advertising notice may advertise the issuer's securities offering only if the notice:

- (1) directs prospective investors to the platform (or website, if any) where the disclosure document is posted. NOTE: For example, an active hyperlink to the disclosure document would be a way of directing prospective investors to the platform (or website, if any);
- (2) includes a disclaimer that sales under the Exemption are restricted to North Carolina residents. NOTE: For example, the words "NC residents only" is a way of wording the disclaimer; and
- (3) includes no more information than that permitted by Rule .2044 of this Section.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2044 OTHER REQUIREMENTS FOR PERMITTED ADVERTISING NOTICES**

In addition to the content required by Rule .2043 of this Section, an advertising notice may include one or more of the following statements:

- (1) a statement that the issuer is conducting the securities offering pursuant to the Exemption;
- (2) the name of the escrow agent to which all investor funds shall be directed;
- (3) the terms of the securities offering. For purposes of this Rule and Rules .2011 and .2045 of this Section, “terms of the offering” means:
  - (a) the amount of securities offered;
  - (b) the nature of the securities;
  - (c) the price of the securities; and
  - (d) the closing date of the offering period; and
- (4) factual information about the issuer that is limited to:
  - (a) the legal identity and business location of the issuer;
  - (b) the name of the issuer;
  - (c) the address, phone number, and website of the issuer;
  - (d) the email address of a representative of the issuer; and
  - (e) a brief description of the business of the issuer.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2045 ESTABLISHING A PLATFORM**

- (a) A single public platform shall be established for every securities offering that shall:
  - (1) provide a communication channel that facilitates the public sharing of information related to terms of the offering through a communication channel, leveraging the “wisdom of the crowd”;
  - (2) identify the issuer of the securities under discussion on each communication channel;
  - (3) comply with Rules .2043 and .2044 of this Section when advertising the securities offering; and
  - (4) provide the prospective investor or the investor with the issuer’s disclosure document(s).
- (b) A platform may include the issuer’s quarterly reports.
- (c) The platform shall include a progress indicator for each issuer’s securities offering at a location visible to the prospective investors and investors. NOTE: Examples of progress indicators are pie charts and words indicating milestones achieved or percentage of target amount reached.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2046 INDIVIDUALS NOT SUBJECT TO DEALER REGISTRATION**

Officers, employees, associated independent contractors, and other persons of an issuer involved in the sale of the issuer’s securities shall not be subject to registration as a dealer or salesman if they comply with the safe harbor requirements set out in 17 CFR 240.3a4-1, which is incorporated by reference, including subsequent amendments and editions. A copy of 17 CFR 240.3a4-1 is available on request at no cost by sending an email request to secdiv@sosnc.gov or online at <http://www.sosnc.gov/sec/statutes.aspx>.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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### **18 NCAC 06A .2047 RETENTION OF PLATFORM COMMUNICATIONS**

All communications through a communication channel on a platform shall be preserved for a period of six years after the filing of the Form NCE.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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### **18 NCAC 06A .2048 ADMINISTRATION OF PLATFORM COMMUNICATION CHANNELS**

(a) An issuer, funding portal or registered dealer administering a platform shall:

- (1) establish and enforce guidelines for communication using the communication channels; and
- (2) remove abusive or potentially fraudulent communications.

(b) A funding portal shall only participate in the communication channels on its platform consistent with Rule .2049 of this Section.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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### **18 NCAC 06A .2049 ADDITIONAL COMMUNICATION CHANNEL REQUIREMENTS**

An issuer and persons acting on behalf of the issuer may communicate with prospective investors and investors about the terms of the securities offering if:

- (1) effected through communication channels provided by the issuer, funding portal, or registered dealer on their platforms;
- (2) the issuer identifies itself as the issuer in all communications; and
- (3) persons acting on behalf of the issuer identify their names, titles, and affiliation with the issuer in all communications.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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### **18 NCAC 06A .2050 RESERVED FOR FUTURE CODIFICATION**

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### **18 NCAC 06A .2051 PROVIDING DOCUMENTS TO PROSPECTIVE INVESTORS AND INVESTORS**

The issuer shall provide a prospective investor or investor with the disclosure document that it filed with the Administrator at the time it makes an offer or sale of a security.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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**18 NCAC 06A .2052 MANNER OF PROVIDING DISCLOSURE AND OTHER DOCUMENTS TO A PROSPECTIVE INVESTOR OR AN INVESTOR**

(a) An individual or entity providing a disclosure document, notice, or other information to a prospective investor or investor pursuant to G.S. 78A-17.1 or this Section may provide it in paper or electronic format, unless otherwise provided in this Subchapter.

(b) Any information or communication affecting a prospective investor's or investor's rights, except a rescission offer, may only be provided in electronic format if the prospective investor or investor is:

- (1) informed in advance that notices will be provided electronically; and
- (2) provided the opportunity and means to opt out of receipt of electronic notices.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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**18 NCAC 06A .2053 ISSUER SHALL REQUIRE INVESTOR ACTIONS**

(a) Before selling a security to an investor, an issuer relying on the Exemption shall require the investor to provide the issuer with:

- (1) a signed, dated document identifying the investor and containing the certifications required by G.S. 78A-17.1(a)(8);
- (2) a written, signed, and dated certification of:
  - (A) the investor's North Carolina residency; and
  - (B) if applicable, accredited investor status.

If the investor is an entity, its residence shall be the principal place of business where the officers, partners, or managers of the entity primarily direct, control, and coordinate the business activities; and

- (3) evidence supporting the certification(s) made pursuant to Subparagraph (a)(2)(A) of this Rule.

(b) The certifications required by this Rule may be combined in a single document.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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**18 NCAC 06A .2054 INVESTOR CANCELLATION OF INVESTMENT COMMITMENT**

(a) Before an issuer has raised the minimum offering amount an investor may:

- (1) cancel the commitment to invest in the securities offering; and
- (2) request that the investor's funds be returned to the investor.

(b) Within three business days of receipt of notice from an investor, the issuer shall notify the escrow agent to ensure that the funds are returned to the investor.

(c) The escrow agent shall release the funds from the escrow account to the investor no later than 10 days from the escrow agent's receipt of the notice.

(d) The issuer, investor, and escrow agent shall follow the procedures set out in the disclosure document and escrow agreement when complying with this Rule.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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**18 NCAC 06A .2055 RELEASE OF FUNDS IN ESCROW ACCOUNT**

(a) An escrow agent shall only release funds in the escrow account:

- (1) to the issuer if the minimum offering amount has been reached by the target date and the funds have been deposited in the escrow account; or
- (2) to an investor if:
  - (A) the minimum offering amount has not been reached by the target date;
  - (B) the issuer notifies the escrow agent pursuant to Rule .2054 of this Section with respect to an investor's cancellation of the investment; or
  - (C) the issuer terminates the offering for any reason prior to the minimum offering amount being reached by the target date.

(b) An escrow agent shall return investor funds in full and shall not reduce the funds returned by the amount of any fees, commissions, or expenses.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2056 ISSUER NOTICE TO INVESTORS MINIMUM OFFERING AMOUNT REACHED**

The issuer shall provide a written notification to all investors of the date when the minimum offering amount has been reached. The notification shall be provided within 10 days of the date when the minimum offering amount has been reached.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2057 QUARTERLY REPORTS**

- (a) The issuer shall provide quarterly reports to the investors and file the reports with the Administrator until no securities issued in the securities offering are outstanding.
- (b) The issuer's first quarterly report shall be due 45 days after the end of the fiscal quarter in which the minimum offering amount is reached.
- (c) In addition to the information required by G.S. 78A-17.1(c), a quarterly report shall include the status of the securities offering, indicating the progress of the securities offering toward the target offering amount.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2058 CONCLUSION OF THE OFFERING**

The issuer shall file a report with the Administrator within 10 days of the conclusion of the securities offering. The report shall include:

- (1) the number of investors;
- (2) the aggregate amount of securities sold during the offering, expressed as:
  - (a) number of units of securities sold; and
  - (b) dollars raised by the sale of securities;
- (3) the date on which the funds were released to the issuer or returned to the investors; and
- (4) the date on which the securities offering was concluded.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);

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**18 NCAC 06A .2059      RESERVED FOR FUTURE CODIFICATION**

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**18 NCAC 06A .2060      ISSUER RECORDKEEPING REQUIREMENTS**

- (a) With regard to documents related to the Exemption, an issuer shall retain:
- (1) copies of documents that it makes;
  - (2) copies of documents that it receives; and
  - (3) documents of any persons acting on its behalf. The issuer shall not be required, pursuant to this Rule, to obtain and retain documents from escrow agents, funding portals, and registered dealers other than those documents it receives in the ordinary course of business related to the securities offering pursuant to the Exemption.
- (b) An issuer shall make and preserve copies of all communications in any medium used, published, or distributed that are related to the securities offering. For purposes of this Rule, “communications” include social media posts and other electronic distributions relating to the securities offering.
- (c) The documents referred to in Paragraphs (a) and (b) of this Rule shall be retained by the issuer for a period of at least six years after the date of initial filing of the Form NCE with the Administrator.
- (d) An issuer shall produce documents to the Administrator upon request or demand. An issuer shall keep the documents in a location and manner that will permit access, inspection, and review in North Carolina by the Administrator.
- (e) Failure to keep or produce documents pursuant to Paragraph (d) of this Rule may form the basis for an order denying or revoking the Exemption pursuant to G.S. 78A-18.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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**18 NCAC 06A .2061      FUNDING PORTAL RECORDKEEPING REQUIREMENTS**

- (a) The funding portal shall make and preserve the following:
- (1) all documents related to an investor who purchases or attempts to purchase securities through the funding portal;
  - (2) all documents related to:
    - (A) issuers who offer and sell or attempt to offer and sell securities through the funding portal; and
    - (B) the controlling persons of such issuers related to the securities offering;
  - (3) documents of all communications that occur on or through its platform;
  - (4) all documents related to persons that use communication channels provided by a funding portal to promote an issuer’s securities or communicate with prospective investors;
  - (5) all documents to demonstrate compliance with the requirements set out in the Rules in this Section;
  - (6) all notices provided by such funding portal to issuers and investors generally through the funding portal’s platform or otherwise;
  - (7) all written agreements entered into relating to its business in connection with offerings listed on the funding portal or offerings by issuers rejected by the portal;
  - (8) all daily, monthly, and quarterly summaries of transactions effected through the funding portal;
  - (9) a log reflecting the progress toward meeting the target offering amount of each issuer who offers or sells securities through the funding portal; and
  - (10) a copy of all documents relating to the escrow account or any account maintained on behalf of an issuer.

(b) The funding portal shall keep the documents required by Paragraph (a) of this Rule for a period of six years from the date of creation of the document.

(c) The funding portal shall keep the documents in a location and manner that will permit access, inspection, and review in North Carolina by the Administrator. The documents shall be subject to inspection by representatives of the Administrator upon reasonable examination from time to time, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors.

(d) Failure to make, keep, or produce documents upon request may subject the funding portal to administrative action pursuant to G.S. 78A-39.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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### **18 NCAC 06A .2062 REQUIREMENT FOR RETENTION OF ORIGINAL OR EQUIVALENT**

With the exception of a registered dealer, a person subject to G.S. 78A-17.1 and the Rules in this Section shall:

- (1) ensure that filed electronic documents include all meta-data or other information related to the properties or history of the document; and
- (2) retain the information:
  - (a) in the original form in which the information was created; or
  - (b) in any other format that accurately captures and retains the original information.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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### **18 NCAC 06A .2063 PROTECTION OF INVESTORS AGAINST FRAUD AND OTHER MISCONDUCT**

An issuer relying on the Exemption shall not directly or indirectly engage in any activity that violates G.S. 78A-8 with regard to the issuer's offer or sale of securities.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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### **18 NCAC 06A .2064 INTEGRATION**

(a) An issuer shall not use more than one exemption under G.S. 78A and this Section at the same time.

(b) The Administrator shall coordinate the interpretation of other securities integration issues in a manner consistent with current principles in federal securities laws.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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### **18 NCAC 06A .2065 REQUEST FOR WAIVER**

(a) The Administrator may waive any rule in this Section other than Rule .2004(h) upon evaluation of a written request for a waiver and the factors set out in Rule .2066 of this Section.

(b) A written request for a waiver shall include:

- (1) the identity of the person or entity filing the request (“the requestor”);
- (2) contact information for the requestor;
- (3) the specific rule(s) for which a waiver is requested;
- (4) the reason(s) a waiver is being requested;
- (5) the applicability of the factors set out in Rule .2066 of this Section;
- (6) any other information the requestor thinks would help the Administrator make a decision on the waiver request; and
- (7) any other information addressing the factors the Administrator may consider in evaluating the waiver request pursuant to Rule .1504 of this Subchapter and Rule .2066 of this Section.

(c) The Administrator may consider a request for waiver as a request for an interpretative opinion or no action letter, which would require a fee pursuant to G.S. 78A-50(e) and Rule .1504 of this Subchapter.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2066 FACTORS ADMINISTRATOR MAY CONSIDER WITH REGARD TO WAIVER REQUESTS**

The Administrator may consider the following factors when considering whether to grant a waiver request:

- (1) the benefits to the particular investors and to the general investing public of compliance with the rule for which waiver is requested;
- (2) the nature and severity of the actual or potential harm to the public, prospective investors, investors, the funding platform (if the requestor is the issuer), or other members of the regulated community;
- (3) the necessity for a waiver as explained in the waiver request;
- (4) the harm if the waiver is not granted;
- (5) the business history, qualifications, and disciplinary history of the person or persons effecting the securities transactions;
- (6) history of prior sanctions imposed on the requester by the Department, the SEC, or FINRA;
- (7) the requester's record for timeliness, completeness, and accuracy of filings with the Department;
- (8) previous requests from the requester for waivers by the Administrator;
- (9) evidence in mitigation and aggravation, including the requestor’s expertise in securities law and practice;
- (10) the need for full and adequate disclosure of information relevant to investment decisions;
- (11) impact of the granting of the waiver on consistency of enforcement by the Administrator; and
- (12) any other factors that are relevant to the protection of the investing public.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2067 ADMINISTRATOR NOTICE OF APPROVAL OR DENIAL OF A WAIVER**

The Administrator shall notify the requestor in writing of:

- (1) its decision to consider the request for a waiver; or
- (2) of its approval or denial of the request for waiver.

The Administrator shall send the notice to the address stated in the waiver request.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2068 SIGNATURES**

Unless otherwise specified in G.S. 78A-17.1 or this Section, a form or document filed with the Administrator shall be signed by an officer of the entity authorized to sign for the entity. The officer's title or indication of the officer's authority to sign the document shall be entered in the designated space for that information.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2069 ELECTRONIC SIGNATURE**

(a) Signers of documents electronically submitted to the Administrator in connection with a filing may use any form of electronic signature permissible according to G.S. 66-312(9) except that it shall not be a sound.

(b) By electronically submitting a document or form to the Administrator in connection with a filing, the person who signs the document or form submitted affirms the authenticity of the signature on that document or form.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2070 SIGNATURE VERIFIES INFORMATION IS TRUE**

A signature on a document submitted to the Administrator in connection with a filing shall be the signer's verification that the signer:

- (1) has read the form or document; and
- (2) knows that all information entered on the form or document is true.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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#### **18 NCAC 06A .2071 FILING WITH THE ADMINISTRATOR**

(a) A document may be filed with the Administrator:

- (1) electronically;
- (2) by hand delivery or by courier to the Secretary of State; or
- (3) by mail delivered to the Secretary of State.

(b) A document that is filed electronically and received after 5 p.m. Eastern Standard Time shall be deemed received on the next business day.

(c) A form for which a fee is required shall be filed together with the fee.

*History Note:* Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a);  
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**18 NCAC 06A .2073 FILING ELECTRONICALLY**

(a) A form or document may be submitted electronically in connection with a filing by:

- (1) completing a fillable form on the Department's website at <http://sosnc.gov/Sec/>, when such a form becomes available on the website, and making any required payment of fees accepted through the website;
- (2) uploading a completed form or document to the Department's website at <http://sosnc.gov/Sec/>, and making any required payment of fees accepted through the website; or
- (3) sending an email with a copy of the form or document to [secdiv@sosnc.gov](mailto:secdiv@sosnc.gov) unless payment of a fee is required.

(b) An electronically submitted form or document shall not be deemed received by the Administrator unless the filer receives an electronic confirmation of receipt of the submission from the Administrator.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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**18 NCAC 06A .2074 AMENDING A DOCUMENT FILED WITH THE ADMINISTRATOR**

A filing or other document may be amended by submitting to the Administrator:

- (1) a copy of the amended document with the amendments marked to show changes; and
- (2) a copy of an amended document without the changes marked.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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**18 NCAC 06A .2075 ABANDONMENT OR WITHDRAWAL OF FILING**

(a) An issuer, escrow agent, funding portal, or registered dealer shall be deemed to have abandoned the filing if it fails to respond to a request for additional information from the Administrator more than 30 days after the date specified by the Administrator.

(b) An issuer, escrow agent, funding portal, or registered dealer may withdraw a filing by submitting to the Administrator a signed, dated, written request to withdraw the filing.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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**18 NCAC 06A .2076 CALCULATION OF TIME**

Unless a different time period is stated in this Section, time periods shall be calculated according to the provisions of G.S. 1A-1, Rule 6.

*History Note: Authority G.S. 78A-17.1(a)(5); 78A-17.1(f); 78A-49(a); 78A-49(d); 78A-64; S.L. 2016-103, s.4.(a); Eff. April 1, 2017.*

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